

**STRICKEN PURSUANT TO
THE ORDER ENTERED AT
ECF NO. 5305 ON 3/1/2018.**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: ETHICON, INC. PELVIC REPAIR)	
SYSTEM PRODUCTS LIABILITY LITIGATION)	
)	MDL NO. 2327
)	
<hr/> THIS DOCUMENT RELATES TO ALL CASES)	
)	

**PRETRIAL ORDER # ____
(ORDER APPOINTING CATHY YANNI AS SPECIAL MASTER
FOR PRIVATE SETTLEMENT AGREEMENTS BETWEEN ETHICON AND CERTAIN
PLAINTIFFS' COUNSEL)**

Bertram & Graf, L.L.C. (collectively, "Plaintiffs' Counsel") has entered into a separate Confidential Settlement Agreement (the "Settlement Agreement") with Ethicon, Inc. and related entities defined by agreement as "Ethicon" to resolve the claims related to the implantation of Ethicon Pelvic Mesh Products (as defined in the Settlement Agreement). Under the provisions of the Settlement Agreement, Plaintiffs' Counsel has agreed to seek the approval of this Court to appoint a Special Master to perform certain defined functions related to the administration and implementation of the Settlement Agreement. Plaintiffs' Counsel believes that Cathy Yanni is well-qualified to perform these and other functions discussed below.

Accordingly, Plaintiffs' Counsel request, pursuant to the Court's inherent case management powers, the appointment of Cathy Yanni to assist in the administration and implementation of their settlement with Ethicon, with the authority to:

- Determine that the calculation, allocation, division and distribution of settlement payments among the claimants pursuant to the terms of the Settlement Agreement provides for fair and reasonable compensation for each client based on the facts and circumstances of this litigation, including the risk to all parties of litigation, the cost, the

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time delay, the medical evidence, the science, the compensation circumstances, and the inherent risk of litigation generally;

- Serve as arbitrator in binding arbitration for any insurance companies or other third-parties who agree in writing with Plaintiffs' Counsel to submit any disputes regarding whether or not health care coverage and reimbursement claims fall within the scope of the litigation and therefore subject to insurance liens or subrogation rights, and if so, the amount of such liens under terms of the applicable agreement between counsel and the insurer;
- Serve as a mediator of claims if jointly requested by Plaintiffs' Counsel and Ethicon; and
- Serve as the final and binding arbitrator on any and all Appeals asserted by claimants to the settlement allocation.

Ethicon does not oppose Plaintiffs' Counsel's request. The Court, pursuant to its inherent authority, and having considered the request, and cognizant of the important public policy of encouraging settlement among litigating parties, hereby issues the following Order.

IT IS ORDERED THAT:

1. Cathy Yanni, JAMS, Two Embarcadero Center, Suite 1500, San Francisco, CA 94111, is hereby appointed as the Special Master for the administration of the settlement reached between Plaintiffs' Counsel and Ethicon, related to the implantation of Ethicon Pelvic Mesh Products (as defined in the Settlement Agreement).
2. The duties of the Special Master shall be as set forth in the confidential Settlement Agreement entered into between Plaintiffs' Counsel and Ethicon.
3. In furtherance of the fair and efficient administration and implantation of the settlements, the Special Master may have *ex parte* communications with the parties to the Settlement

Agreement, Plaintiffs' Counsel and their clients, Ethicon and its counsel, or the Court, and such *ex parte* communications shall not be deemed to have waived any attorney-client privileges.

4. The Special Master shall be compensated privately as specified respectively in the Settlement Agreement or by agreement with Plaintiffs' Counsel. The Court will approve all compensation made to the Special Master. The Court approves payment of the Special Master in accordance with the following:
 - a. Claimants and Plaintiffs' Counsel and the Special Master agree that the JAMS will receive a payment of \$300.00 per case or claim which is the subject of the Settlement Agreement, plus \$10,000.00 per calendar quarter commencing with the calendar quarter in which the Settlement Agreement is entered, and \$2,000.00 per appeal for any claim which is the subject of an appeal to the Special Master.
5. Subject to approval and Order of the Court, any firm settling claims against Ethicon related to its pelvic repair system products may engage the Special Master to perform the duties as set forth in that party's settlement agreement. When so approved by the Court, this Order shall apply.
6. An affidavit by the Special Master has been submitted and is attached hereto.
7. The Special Master shall report to the Court on a quarterly basis or as requested by the Court.

The Court **DIRECTS** the Clerk to file a copy of this order in _____ and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number _____. In cases subsequently filed in this district, a copy of the most recent

pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsd.uscourts.gov.

ENTER:

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE